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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,487	11/11/2003	Kevin A. Kelly	D24-le	5112

7590 10/06/2005

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EXAMINER

NGUYEN, TAM M

ART UNIT PAPER NUMBER

3764

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/705,487

Applicant(s)

KELLY ET AL.

Examiner

Tam Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 41-204 is/are pending in the application.
- 4a) Of the above claim(s) 41-101, 112-192 and 195-204 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 102-110, 193 and 194 is/are rejected.
- 7) ☒ Claim(s) 111 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
JEROME W. DONNELLY  
PRIMARY EXAMINER

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11-11-03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 41-101, 112-192 and 195-204 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Invention I and Species A-C and J-J of Invention II, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on July 14, 2005.
2. Applicant's election with traverse of Species D of Invention II in the reply filed on July 14, 2005 is acknowledged. Since the remaining species are not obvious variants of the elected species and the applicant has not shown that the species are not patently distinct, the restriction requirement remains.

### ***Claim Objections***

3. Claim 102 is objected to because of the following informalities:  
  
In claim 102, line 12, is the term "converter". It should be replaced by --actuator--.  
  
In claim 102, line 13, is the term "actuator". It should be replaced by --converter--.  
  
In claim 102, line 14, is the term "converter". It should be replaced by --actuator--.  
  
Appropriate correction is required.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

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patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 102, 103, 104, 105, 106, 107, 108, 109 and 110 are rejected under the judicially created doctrine of double patenting over claims 12, 2, 3, 5, 6, 9, 12, 10 and 13 and respectively of U. S. Patent No. 6,645,163 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

4. The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: an apparatus for increasing the flow of blood in a patient, the apparatus comprises a base, an actuator, a belt means configured to wrap around the patient's chest, and a force converter that is coupled to the actuator and having two belt connectors coupled to opposite ends of the belt means for converting a force directed to the patient's chest and applied to the actuator to tighten the belt around the patient wherein the actuator includes a toothed surface coupled to the converter and gears such that the force applied to the actuator causes the toothed surface to move along the gears to move the belt connectors to tighten around the patient.

Claims 193 and 194 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 5 of U.S. Patent No. 6,645,163 in view of Barkalow et al. (4,198,963).

5. As to claims 193 and 194, Kelly et al. '163 discloses an apparatus for increasing blood flow wherein the apparatus includes a defibrillating means as substantially

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claimed. Kelly does not disclose a detector means coupled to the belt for determining when a maximum force has been applied to the actuator to tighten the belt and wherein the defibrillating means is coupled to the detector means such that an electric current is induced through the patient's chest when a maximum belt tightening force is applied.

Barkalow discloses a cardiac compressor, a defibrillator and a detector means for determining when a maximum force has been applied by the compressor such that the defibrillator may induce an electric current/shock only at the time of maximum compression (see Col. 9, lines 52). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Barkalow's detector means with Kelly's apparatus such that the current or shock can be induced in synch with when a maximum force is applied to the user's chest so that only a small amount of electrical energy is needed. The reduction in required energy reduces the traumatic effect on the heart muscle and it allows for defibrillators to be smaller and lighter for ease of transport.

#### ***Allowable Subject Matter***

6. Claim 111 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Geehan '481 and Bystrom et al. '969 each disclose resuscitation devices having defibrillating means.

Tien-Tsai '843, Cantrell et al. '613, Chang '185, Sherman '106 and Mollenauer et al. '962 each disclose resuscitation devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4778. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 30, 2005.

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